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C O N F I D E N T I A L SECTION 01 OF 03 ADDIS ABABA 002304

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DEPARTMENT FOR AF/E
LONDON, PARIS, ROME FOR AFRICA WATCHER

E.O. 12958: DECL: 08/16/2016
TAGS: [PGOV](#) [KJUS](#) [PHUM](#) [KDEM](#) [ET](#)
SUBJECT: ETHIOPIA: PROSECUTION IN CUD TRIAL DEFENDS EVIDENCE

REF: ADDIS ABABA 01788

Classified By: CHARGE D'AFFAIRES JANET WILGUS. REASON: 1.4(D)

11. (C) SUMMARY: In a meeting with prosecutors for the case against Coalition for Unity and Democracy (CUD) leaders, independent journalists and civil society representatives, Charge Huddleston discussed the GoE's evidence against the defendants. The lead prosecutor and State Minister of Justice stated that substantial evidence has been presented thus far, and that upcoming witnesses and documentary evidence will solidify their case. The prosecution is trying to show that the defendants attempted to overthrow the constitutional order by: 1) organizing an armed rebellion; 2) calling for armed struggle under the guise of "peaceful rebellion;" 3) calling for the establishment of a transitional government; and 4) vilifying and questioning the legitimacy of governmental institutions. Further, attempts by the CUD to establish relations with the OLF and Eritrea are considered "treason." The prosecutors explained that the charge of conspiracy applies to all defendants since they all subscribed to "a common criminal objective," even if individuals have not committed an "overt act." COMMENT: There are clearly some major discrepancies between the prosecution's view of unlawful undermining of the constitutional order on one hand, and international standards of free speech and legitimate political activity on the other. The prosecution may be able to mount a coherent case that Hailu Shawel and some other defendants organized or supported violent efforts to overthrow the GoE, however. The decision of Hailu and most other defendants not to defend themselves may prevent them from challenging damaging documentary evidence and witness testimony. END SUMMARY.

12. (SBU) On August 15, 2006, Charge Huddleston, together with DCM, Pol/Econ Counselor and Poloff, met with the Vice-Minister of Justice for Criminal Affairs, Dr. Hashim Mohammed, and the lead prosecutor in the case against opposition CUD leaders, Shemelis Kemal. The meeting was a result of Poloff's discussions with Shemelis following trial sessions and Shemelis, agreement to provide Post with a copy of documentary evidence the prosecution plans to present. Shemelis requested a meeting with Emboffs in order to explain these documents, the prosecution's case to date, as well as its strategy once the trial resumes in October.

ORANGE REVOLUTION NOT A LEGAL OPTION IN ETHIOPIA

13. (C) Charge opened the meeting by stating that Post,

together with the majority of those in the international community, feel that the prosecution has not yet made convincing case to prove the serious charges brought against defendant CUD leaders, civil society members and journalists. She asked Hashim and Shemelis to explain what the prosecution intended to show by the evidence presented thus far and if the evidence yet to be presented will bolster the case they are trying to make.

¶4. (C) Hashim and Shemelis responded that the evidence presented so far primarily supports the charge of "crimes against the constitution." During the meeting, they repeatedly stated that the defendants "attempted to change the constitution in an illegal way," pointing out that "in our system, one cannot legally change the constitution through civil disobedience" but instead must go through the proper processes and procedures, "not like in an Orange Revolution" (as in Ukraine). They stressed that the defendants tried to "subvert the constitutional system and no system can afford to be lenient against an onslaught of its core values." Hashim and Shemelis stated that the whole group of defendants conspired to use the electoral process to discredit and undermine the constitutional system, rather than defeating the EPRDF in the polls. Prosecutors claimed that the group was following a script laid out in a book by exile Negede Gobeze.

¶5. (C) In response to Charge's request for specific examples of their case, Hashim and Shemelis stated emphatically that the prosecution feels it has thus far made a compelling case. Hashim stressed that it is not necessarily one video or document that proves the guilt of the defendants, rather bits and pieces from all of the evidence must be put

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together.

SECRET ORGANIZATION WITHIN THE CUD

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¶6. (C) In discussing the video stage of evidence, they said that the prosecution originally wished to show only "relevant" parts of the videos, but the bench instead ruled that the entire cassette must be shown, following objections from the defense that context is otherwise lost. They pointed out that the last video, which was a 12-minute selection of highlights from the previously shown videos, makes the strongest case from the video stage. (NOTE: This video was ruled inadmissible by the bench, following further objections from the defense that presenting clips does not show context (reftel). END NOTE) Nevertheless, they pointed out that the videos show that the defendants made repeated calls for the establishment of a transitional government, "which is a means of suspending the constitution." Shemelis said that in one video, Hailu Shawel, in response to a question by a fellow CUD member regarding the intentions of the CUD Supreme Council, said that he could explain in more detail privately, which Shemelis said shows Hailu "alluding to the fact that a secret organization existed within the CUD."

¶7. (C) Hashim and Shemelis stated that the documentary evidence also contains proof of a secret organization within the CUD. The original documentary evidence shows that the CUD had connections to Eritrea, based on a letter from Hailu Shawel that seeks to make contact with the outlawed Oromo Liberation Front (OLF), which in turn has connections to Eritrea. Shemelis also noted that among the strongest evidence is a CUD "hit list" of top ruling party officials found in the home of Getachew Mengiste.

HOW MANY WITNESSES?

¶8. (C) Although Hashim stated that "even without the witnesses, we feel we have a strong enough case (to convict)," the prosecution plans to call a number of witnesses following resumption of the trial in October. The original list of witnesses submitted by the prosecution contained over 300 people. Hashim indicated that the actual number would be significantly less, however. (NOTE: Julian Filochowski (protect) of ActionAid told Poloff that a member of the prosecution team had informed him that the actual number of witness would be approximately 30. END NOTE) The witness stage of evidence will help to support and tie together the "bits and pieces" of evidence from videos and documents, as well as present new evidence, according to Hashiem and Shemelis. Witnesses will be presented that corroborate the accusation that a secret organization existed in the CUD, as well as show that Hailu helped to set up and finance armed rebel groups in Shoa and Gondor.

COMMENT: SOME EVIDENCE ON HAILU, LITTLE PROOF OF CONSPIRACY

¶9. (C) The prosecutors provided a valuable window on GoE thinking on this divisive case. The prosecution is trying to show that the CUD leadership and the co-accused attempted to overthrow the existing constitutional order by: 1) organizing an armed rebellion in East Gojjam and North Shoa zones; 2) calling for armed struggle under the guise of "peaceful rebellion;" 3) calling for the establishment of a transitional government (which they consider extra-constitutional); and 4) vilifying and questioning the legitimacy of governmental institutions. Further, attempts by the CUD to establish relations with the OLF and Eritrea are considered "treason." The prosecutors also explained that the charge of conspiracy applies to all defendants; since they all subscribe to "a common criminal objective," (i.e. overthrow of the constitutional order), the entire group is part of the conspiracy, even if individuals have not committed an "overt act."

¶10. (C) There are clearly some major discrepancies between their view of unlawful undermining of the constitutional order and international standards of free speech and

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legitimate political activity. There has also been no direct evidence so far to demonstrate an organized conspiracy among the nearly 90 diverse defendants, and prosecutors have not even mentioned some defendants in their presentations. The prosecution may be able to mount a coherent case that Hailu Shawel and some other defendants organized or supported violent efforts to overthrow the GoE, however. The decision of Hailu and most other defendants not to defend themselves may well prevent them from challenging damaging documentary evidence and witness testimony.
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